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Foreseeable Harm Standard

Applying the "Foreseeable Harm" Standard

After taking all of these openness principles into account, there still will be records and portions of records for which protection will remain entirely appropriate. As the Attorney General recognized in his Guidelines, "the disclosure obligation under the FOIA is not absolute." Congress included exemptions from mandatory disclosure to protect against different harms, such as, for example, harm to national security, harm to personal privacy, and harm to law enforcement interests.

Under the Attorney General's Guidelines, before withholding a record, the agency must reasonably foresee that disclosure would harm an interest protected by one of the exemptions. Thus, FOIA professionals should examine individual records with an eye toward determining whether there is foreseeable harm from release of that particular record, or portion thereof. Each record should be reviewed by agencies for